

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND
INTERFERENCES

In re application of:) Examiner: Brian T. Gedeon
Richard A. O'Hara)
) Art Unit: 3766
Serial No.: 10/598,091)
) Confirmation: 9983
Filed: August 17, 2006)
)
For: **METHOD AND APPARATUS FOR BROADCASTING AUDIBLE INFORMATION PROMPTS FROM AN EXTERNAL DEFIBRILLATOR**)
) **EXPEDITED PROCEDURE**
Date of Final Office Action:)
July 29, 2008)
)
Attorney Docket No.:) Cleveland, OH 44114
PHUS040128US2/PKRZ201296) December 22, 2008

BRIEF ON APPEAL

CERTIFICATE OF ELECTRONIC TRANSMISSION

I certify that this **BRIEF ON APPEAL** and accompanying documents in connection with U.S. Serial No. 10/598,091 is being filed on the date indicated below by electronic transmission with the United States Patent and Trademark Office via the electronic filing system (EFS-Web).

December 29, 2008
Date

Patricia A. Heim
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I. **STATEMENT OF REAL PARTY IN INTEREST (41.37(f))**

The real party in interest for this appeal and the present application is Koninklijke Philips Electronics, N.V.

II. STATEMENT OF RELATED CASES (41.37(g))

None

III. JURISDICTIONAL STATEMENT (41.37(h))

The Board has jurisdiction under 35 U.S.C. 134(a).

The Examiner mailed a final rejection on July 29, 2008, setting a three-month shortened statutory period for response.

The time for responding to the final rejection expired on October 29, 2008. Rule 134.

A Notice of Appeal was filed on October 28, 2008.

The time for filing an Appeal Brief is two months after the filing of a notice of appeal. Bd.R. 41.37(c). The time for filing an Appeal Brief expires on December 28, 2008.

The Appeal Brief is being filed on the date set forth on the Certificate of Transmission.

IV. TABLE OF CONTENTS (41.37(i))

	<u>Page</u>
I. STATEMENT OF REAL PARTY IN INTEREST (41.37(f))	2
II. STATEMENT OF RELATED CASES (41.37(g))	3
III. JURISDICTIONAL STATEMENT (41.37(h))	4
IV. TABLE OF CONTENTS (41.37(i))	5
V. TABLE OF AUTHORITIES (41.37(j))	6
VI. STATUS OF AMENDMENTS (41.37(l))	7
VII. GROUNDS OF REJECTION TO BE REVIEWED (41.37(m))	8
VIII. STATEMENT OF FACTS (41.37(n))	9
IX. ARGUMENT (41.37(o))	14
A. Claim 8 Is Patentable over Rockwell as Modified by Hamilton	14
B. Claim 16 Is Not Anticipated By Nor Obvious Over Rockwell, Taken Alone	17
C. Claim 18 is Patentable Over Rockwell as Modified by Matos.....	19
D. CONCLUSION.....	21
APPENDIX	22
X. CLAIMS SECTION (41.37(p))	22
XI. CLAIM SUPPORT AND DRAWING ANALYSIS SECTION (41.37(r))	25
XII. MEANS OR STEP PLUS FUNCTION ANALYSIS SECTION (41.37(s))	28
XIII. RELATED CASES SECTION (41.37(u))	29

V. **TABLE OF AUTHORITIES (41.37(j))**

None

VI. STATUS OF AMENDMENTS (41.37(I))

Amendment C (After Final) of September 22, 2008 has been entered.

In a telephone communication on December 18, 2008, Supervisory Patent Examiner Leyno confirmed that, pursuant to the Advisory Action of November 25, 2008, the Amendment After Final was entered.

VII. GROUNDS OF REJECTION TO BE REVIEWED (41.37(m))

Whether claim 8 is unpatentable in the sense of 35 U.S.C. § 103 over Rockwell (US 6,405,083) in view of Hamilton (US 2002/0055458).

Whether claim 16 is anticipated in the sense of 35 U.S.C. § 102 or unpatentable in the sense of 35 U.S.C. § 103 over Rockwell in view of Moore (US 7,231,258).

Whether claim 18 is unpatentable in the sense of 35 U.S.C. § 103 over Rockwell in view of Matos (US 7,277,752).

VIII. STATEMENT OF FACTS (41.37(n))

1. Claim 8 calls for transmitting voice prompts over a wireless protocol to a receiver embedded in headphones, a wireless telephone, or a PDA (claim 8, lines 5, 6, and 10-14).
2. The Examiner asserts that speaker 232 of Rockwell operates to provide audible voice prompts to a user and that Rockwell includes telemetry receivers 302 and 304 which serve for wireless information transfer communications through standardized wireless protocols (Final Rejection, page 6, paragraph 9).
3. The Examiner further asserts that Hamilton may assist the user with audio prompts, but primarily relies upon Hamilton for its teachings regarding electrode contact impedance (Final Rejection, page 6, paragraph 9 (cont)).
4. One difficulty with automatic and semi-automatic external defibrillators (referred to collectively as AEDs) is that the AEDs are generally portable devices and the size of the speakers is limited (present application, page 2, lines 28-29).
5. The small speakers cannot be driven hard, and the volume and fidelity of the speakers are limited (present application, page 2, lines 29-31).

6. The small speakers can present serious problems with the AED is used in a noisy environment, frustrating the first responder's ability to adequately comprehend and follow the aural prompts (present application, page 2, line 31 – page 3, line 1).
7. For example, AEDs are commonly deployed and used on commercial aircraft, where high levels of ambient noise drown out the aural instructions that are issued from the AED during a rescue (present application, page 3, lines 1-3).
8. Another problem with aural prompts is that they can interfere with the recording of background conversations occurring during the rescue process (present application, page 3, lines 3-4).
9. Fire departments and other public agencies commonly requiring recordings to be made during a rescue operation in order to conduct a post-rescue analysis (present application, page 3, lines 4-6).
10. Frequent aural prompts issued by the AED can disrupt or drown out the running commentary (present application, page 3, lines 6-7).
11. The wireless communication of Rockwell is between the AED and a central unit, and is used for downloading an event summary 130 to a host computer back at the station, or a mobile computer (Rockwell, col. 9, lines 31-35).

12. The wireless communication may also be used when performing a handoff from the AED to a more sophisticated hospital unit upon arriving at the hospital emergency department (Rockwell, col. 9, lines 5-19).
13. Claim 16 calls for transmitting over a wireless protocol, a voice prompt instructing the user to attach the set of electrodes to the patient and instructing the user by explaining how to administer defibrillator therapy (claim 16, lines 8-9 and 13-14).
14. The Examiner appears to agree that in Rockwell, the speaker 232 delivers the audible voice prompts to the user (Final Rejection, page 3, paragraph 6).
15. However, the Examiner points to telemetry receivers 302 and 304 and col. 5, lines 10-21 and col. 13, line 47 – col. 14, line 10 of Rockwell (Final Rejection, page 3, paragraph 6).
16. Col. 5, lines 10-22 of Rockwell merely lists conventional wireless communications protocols which may be used to communicate between the AED and a host computer.
17. Col. 7, lines 24-43 of Rockwell referenced by the Examiner do not address wireless communications.
18. Col. 13, line 47 – col. 14, line 10 of Rockwell describes how learning scenarios are downloaded into the AED.

19. There is no description in col. 13, line 47 – col. 14, line 10 of Rockwell of transmitting over a wireless protocol voice prompts instructing the user.
20. Rather than being used to instruct the user, it is submitted that the wireless communications of Rockwell would be used for handing off responsibility for a patient from the AED to a hospital defibrillator at the hospital emergency department (Rockwell, col. 9, lines 5-19) or downloading an event summary to a host computer (Rockwell, col. 9, lines 31-35).
21. Moreover, claim 16 calls for the voice prompts to instruct the user that a patient assessment is beginning (col. 16, lines 15-16).
22. The Final Rejection of claim 16 does not address a patient assessment voice prompt (Final Rejection, page 3, paragraph 6).
23. The Final Rejection does address the exemplary voice prompts described at col. 7, lines 24-43 of Rockwell.
24. Upon reading col. 7, lines 24-43 of Rockwell, it is apparent that the listed prompts do not include a voice prompt instructing the user that a patient assessment is beginning.
25. Claim 18 calls for a voice circuit for generating audio prompts (claim 18, line 8).

26. In the rejection of claim 18, the Examiner does not assert that either Rockwell or Matos include a voice circuit for generating audio prompts initiated by a controller (Final Rejection, page 5, paragraph 8).
27. Claim 18 further calls for a wireless transmitter coupled to the voice circuit for transmitting the audio prompts over a wireless communication protocol (claim 18, lines 9-11).
28. The Examiner cites to col. 33, lines 16-55 of Matos, asserting that it discloses the use of speakers or headphones (Final Rejection, page 5, paragraph 8).
29. Like Rockwell, col. 33, lines 16-55 of Matos describe using a wireless protocol to communicate between the AED and a base station or master control unit.
30. Rather, Matos, like Rockwell, uses the wireless communications to communicate with the central station 300 (Matos, column 33, lines 16-55).
31. In Rockwell, the wireless communications similarly download reports, upload training simulations, and the like via wireless communications with a host computer, e.g., at a central station (Rockwell, column 9, lines 31-35).

IX. ARGUMENT (41.37(o))

A. Claim 8 Is Patentable over Rockwell as Modified by Hamilton

Claim 8 calls for transmitting voice prompts over a wireless protocol to a receiver embedded in headphones, a wireless telephone, or a PDA (claim 8, lines 5, 6, and 10-14). The Examiner asserts that speaker 232 of Rockwell operates to provide audible voice prompts to a user and that Rockwell includes telemetry receivers 302 and 304 which serve for wireless information transfer communications through standardized wireless protocols (Final Rejection, page 6, paragraph 9). The Examiner further asserts that Hamilton may assist the user with audio prompts, but primarily relies upon Hamilton for its teachings regarding electrode contact impedance (Final Rejection, page 6, paragraph 9 (cont)).

One difficulty with automatic and semi-automatic external defibrillators (referred to collectively as AEDs) is that the AEDs are generally portable devices and the size of the speakers is limited (present application, page 2, lines 28-29). The small speakers cannot be driven hard, and the volume and fidelity of the speakers are limited (present application, page 2, lines 29-31). The small speakers can present serious problems with the AED is used in a noisy environment, frustrating the

first responder's ability to adequately comprehend and follow the aural prompts (present application, page 2, line 31 – page 3, line 1). For example, AEDs are commonly deployed and used on commercial aircraft, where high levels of ambient noise drown out the aural instructions that are issued from the AED during a rescue (present application, page 3, lines 1-3).

Another problem with aural prompts is that they can interfere with the recording of background conversations occurring during the rescue process (present application, lines 3-4). Fire departments and other public agencies commonly requiring recordings to be made during a rescue operation in order to conduct a post-rescue analysis (present application, lines 4-6). Frequent aural prompts issued by the AED can disrupt or drown out the running commentary (present application, page 3, lines 6-7).

Rockwell, having a speaker 232 built into the AED unit 10, suffers from all of the above problems and drawbacks. Although the AED of Hamilton gives audio prompts, there is no suggestion that the audio prompts are from anything other than a speaker within the AED 10. It might be noted that in Figure 6, the first responder is not shown as using a headphone, wireless telephone, or a PDA.

Because the AED of the present application overcomes the above-discussed problems with the prior art AEDs by using a headphone, wireless telephone, or a PDA to communicate voice prompts to the user; whereas, Rockwell and Hamilton suffer the above-referenced disadvantages of the prior art by virtue of using an internal speaker in the AED, it is submitted that claim 8 distinguishes patentably and unobviously over the references of record.

The wireless communication at column 5, lines 10-21 of Rockwell referenced by the Examiner is between the AED and a central unit, and is used for downloading an event summary 130 to a host computer back at the station, or a mobile computer (Rockwell, col. 9, lines 31-35). The wireless communication may also be used when performing a handoff from the AED to a more sophisticated hospital unit upon arriving at the hospital emergency department (Rockwell, col. 9, lines 5-19). Thus, the wireless communication capability of Rockwell does not relate to transmitting voice prompt instructions to the user explaining how to administer defibrillator therapy.

**B. Claim 16 Is Not Anticipated By Nor
 Obvious Over Rockwell, Taken Alone**

Claim 16 calls for transmitting over a wireless protocol, a voice prompt instructing the user to attach the set of electrodes to the patient and instructing the user by explaining how to administer defibrillator therapy (claim 16, lines 8-9 and 13-14). The Examiner appears to agree that in Rockwell, the speaker 232 delivers the audible voice prompts to the user (Final Rejection, page 3, paragraph 6). However, the Examiner points to telemetry receivers 302 and 304 and col. 5, lines 10-21 and col. 13, line 47 – col. 14, line 10 of Rockwell (Final Rejection, page 3, paragraph 6).

Col. 5, lines 10-22 of Rockwell merely lists conventional wireless communications protocols which may be used to communicate between the AED and a host computer. Col. 7, lines 24-43 of Rockwell referenced by the Examiner do not address wireless communications. Col. 13, line 47 – col. 14, line 10 describe how learning scenarios are downloaded into the AED. Specifically, the AED is typically used with a training mannequin. Various different synthesized physiological responses of the mannequin can be downloaded into the AED to facilitate using the AED to train first responders. There is no description in col. 13, line 47 – col. 14, line 10 of Rockwell of transmitting voice prompts to instruct the

user over a wireless protocol. Rather than being used to instruct the user, it is submitted that the wireless communications of Rockwell would be used for handing off responsibility for a patient from the AED to a hospital defibrillator at the hospital emergency department (Rockwell, col. 9, lines 5-19) or downloading an event summary to a host computer (Rockwell, col. 9, lines 31-35).

Thus, while Rockwell has a wireless communication link, the wireless communication link is not used as required by claim 16 for the transmission of voice prompts with instructions to the user.

Moreover, claim 16 calls for the voice prompts to instruct the user that a patient assessment is beginning (col. 16, lines 15-16). The Final Rejection of claim 16 does not address a patient assessment voice prompt (Final Rejection, page 3, paragraph 6). The Final Rejection does address the exemplary voice prompts described at col. 7, lines 24-43 of Rockwell. Upon reading col. 7, lines 24-43 of Rockwell, it is apparent that the listed prompts do not include a voice prompt instructing the user that a patient assessment is beginning.

Accordingly, it is submitted that claim 16 is not anticipated by Rockwell.

The Examiner does not explain any proposed modification to Rockwell which would address this shortcoming. Accordingly, it is

further submitted that claim 16 is unobvious in the sense of 35 U.S.C. § 103 over Rockwell.

C. Claim 18 is Patentable Over Rockwell as Modified by Matos

Claim 18 calls for a voice circuit for generating audio prompts (claim 18, line 8). In the rejection of claim 18, the Examiner does not assert that either Rockwell or Matos include a voice circuit for generating audio prompts initiated by a controller (Final Rejection, page 5, paragraph 8). The Examiner is invited in the Examiner's Answer to point out where Rockwell or Matos include a voice circuit or, in the alternative, to allow claim 18.

Claim 18 further calls for a wireless transmitter coupled to the voice circuit for transmitting the audio prompts over a wireless communication protocol (claim 18, lines 9-11).

The Examiner cites to col. 33, lines 16-55 of Matos, asserting that it discloses the use of speakers or headphones (Final Rejection, page 5, paragraph 8). Like Rockwell, col. 33, lines 16-55 of Matos describe using a wireless protocol to communicate between the AED and a base station or master control unit. There is no suggestion of wirelessly

transmitting the audio prompts which were generated by a voice circuit within the AED itself using a wireless protocol.

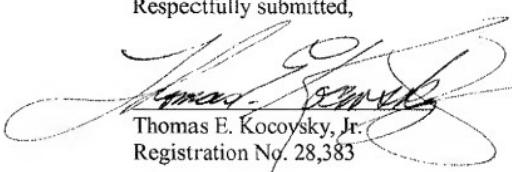
Claim 18 further calls for headphones which have a wireless receiver embedded therein. Again, Rockwell uses a speaker 232 and does not describe headphones. Although Matos mentions headphones, Matos makes no suggestions of a receiver embedded in the headphones or order to receive the wireless protocol transmissions of the audio prompts generated by the voice circuit. Rather, Matos, like Rockwell, uses the wireless communications to communicate with the central station 300 (Matos, column 33, lines 16-55). In Rockwell, the wireless communications similarly download reports, upload training simulations, and the like via wireless communications with a host computer, e.g., at a central station (Rockwell, column 9, lines 31-35). Even if the medical professional 301 of Matos sends voice data to the portable unit 104, such voice communications are not audio prompts generated by a voice circuit of the controller of the portable unit 104. Thus, neither Rockwell, nor Matos, nor the combination thereof, show headphones with a wireless receiver embedded therein.

Accordingly, it is submitted that Rockwell, as modified by Matos, does not meet the limitations of claim 18.

D. CONCLUSION

For the reasons set forth above, it is submitted that claim 8, 16, and 18 are not anticipated by and distinguish patentably over the references of record. An early reversal of the Examiner's rejections of all claims is requested.

Respectfully submitted,



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APPENDIX

X. CLAIMS SECTION (41.37(p))

1-7. (Cancelled)

8. (Rejected) A method of for providing voice instructions to a user for operating an external defibrillator device comprised of at least one set of electrodes couplable to a patient, said method comprising the steps of:

transmitting over a wireless protocol a voice prompt instructing the user to attach the set of electrodes to the patient;

checking the impedance of the at least one pair of electrodes, and prompting the user over the wireless protocol with a voice prompt if the electrodes are not properly attached;

transmitting over the wireless protocol at least one additional voice prompt instructing the user by explaining how to administer defibrillator therapy; and

transmitting the voice prompts to a receiver embedded in a portable device, said portable device being selected from the group consisting of a headphone, wireless telephone and a PDA.

9-15. (Cancelled)

16. (Rejected) A method for providing voice instructions to a user for operating an external defibrillator device comprised of at least one set of electrodes couplable to a patient, said method comprising the steps of:

transmitting over a wireless protocol a voice prompt instructing the user to attach the set of electrodes to the patient;

checking the impedance of the at least one pair of electrodes, and prompting the user over the wireless protocol with an audio prompt if the electrodes are not properly attached; and

transmitting over the wireless protocol at least one additional voice prompt instructing the user by explaining how to administer defibrillator therapy;

wherein the voice prompt instructs the user that a patient assessment is beginning.

17. (Cancelled)

18. (Rejected) A electro therapy device comprising:
- a controller;
 - an energy source;
 - at least one electrode for providing electrotherapy to a patient;
 - an energy delivery system operable by the controller to deliver an electrical shock from the energy source to the at least one electrode;
 - a voice circuit for generating audio prompts initiated by the controller;
 - a wireless transmitter coupled to the voice circuit for transmitting the audio prompts over a wireless communication protocol, the wireless transmitter transmits the audio prompt over the wireless protocol to the user;
 - a portable device including a headphone, the portable device having a wireless receiver embedded therein, said wireless receiver operating in accordance with the wireless communication protocol over which the wireless transmitter operates.

19. (Cancelled)

APPENDIX (Continued)

**XI. CLAIM SUPPORT AND DRAWING ANALYSIS SECTION
(41.37(r))**

8. A method of for providing voice instructions to a user for operating an external defibrillator device {70} comprised of at least one set of electrodes {50} couplable to a patient, {p. 3, l. 10-12; Fig. 1} said method comprising the steps of:

transmitting over a wireless protocol a voice prompt instructing the user to attach the set of electrodes to the patient; {p. 3, l. 12-13; p. 7, l. 10-12; Fig. 1}

checking the impedance of the at least one pair of electrodes, and prompting the user over the wireless protocol with a voice prompt if the electrodes are not properly attached; {p. 3, l. 25 – p. 6, l. 6; p. 7, l. 12-16; Fig. 1}

transmitting over the wireless protocol at least one additional voice prompt instructing the user by explaining how to administer defibrillator therapy {p. 3, l. 14-15; p. 7, l. 17 – p. 9, l. 3; Fig. 1}; and

transmitting the voice prompts to a receiver embedded in a portable device {56}, said portable device being selected from the group consisting of a headphone, wireless telephone and a PDA. {p. 3, l. 27-30; p. 6, l. 24-26; Fig. 1}

16. A method for providing voice instructions to a user for operating an external defibrillator device {70} comprised of at least one set of electrodes {50} couplable to a patient, {p. 3, l. 10-12; Fig. 1} said method comprising the steps of:

transmitting over a wireless protocol a voice prompt instructing the user to attach the set of electrodes to the patient; {p. 3, l. 12-13; p. 7, l. 10-12; Fig. 1}

checking the impedance of the at least one pair of electrodes, and prompting the user over the wireless protocol with an audio prompt if the electrodes are not properly attached {p. 3, l. 25 – p. 6, l. 6; p. 7, l. 12-16; Fig. 1}; and

transmitting over the wireless protocol at least one additional voice prompt instructing the user by explaining how to administer defibrillator therapy; {p. 3, l. 14-15; p. 7, l. 17 – p. 9, l. 3; Fig. 1}

wherein the voice prompt instructs the user that a patient assessment is beginning. {p. 3, l. 18-19; p. 7, l. 9-30; Fig. 1}

18. A electro therapy device {70} comprising:
a controller {74; p. 5, l. 3-9; Fig. 15};
an energy source {12; p. 5, l. 9-10; Fig. 1};

at least one electrode {50} for providing electrotherapy to a patient; {p. 5, l. 20-22; Fig. 1}

an energy delivery system {19} operable by the controller to deliver an electrical shock from the energy source to the at least one electrode; {p. 5, l. 11-24; Fig. 1}

a voice circuit {94} for generating audio prompts initiated by the controller; {p. 6, l. 14-20; Fig. 1}

a wireless transmitter {85} coupled to the voice circuit for transmitting the audio prompts over a wireless communication protocol, the wireless transmitter transmits the audio prompt over the wireless protocol to the user; {p. 6, l. 24-32; p. 9, l. 3; Fig. 1}

a portable device {56} including a headphone, the portable device having a wireless receiver embedded therein, said wireless receiver operating in accordance with the wireless communication protocol over which the wireless transmitter operates. {p. 6, l. 14-17; p. 11, l. 11-14; Fig. 1}

APPENDIX (Continued)

**XII. MEANS OR STEP PLUS FUNCTION ANALYSIS SECTION
(41.37(s))**

Not applicable

APPENDIX (Continued)

XIII. RELATED CASES SECTION (41.37(u))

None